

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

TELSE SHALIN MUNGIA # 98619

PLAINTIFF

VERSUS

CIVIL ACTION NO. 3:16cv54-TLS-RHW

TYRONE LEWIS

DEFENDANT

REPORT AND RECOMMENDATION

This *pro se* prisoner civil rights case came before the Court for a duly noticed *Spears/omnibus* hearing scheduled for Wednesday, December 7, 2016 at 9:30 a.m., before United States Magistrate Judge Robert H. Walker at the United States Courthouse in Jackson, Mississippi in Suite 6.350, Courtroom 6C. The docket reflects, and the Court finds, that on October 26, 2016, Deputy Clerk Sandra Ryan properly notified Telse Shalin Mungia of the hearing by mailing notice thereof to his address of record, 4002 B Oak Avenue, Gulfport, MS 39507.¹ The mailed notice of the December 7, 2016 setting has not been returned as undeliverable, and was presumptively received by Mungia.

Since Mungia filed this action on January 29, 2016, the Court has repeatedly warned him that his failure to keep the Court apprised of his current address or to comply with any order of the Court might result in dismissal of his lawsuit. See Orders [4], [9], [10], [15] and [19]. However, when the Court convened for the scheduled hearing, Mungia failed to appear as ordered. Defense Counsel was present for the hearing at the appointed time.

Deputy Ryan contacted court security officers to ascertain whether Plaintiff had entered the Courthouse, and received a negative response. After waiting until after 10:00 a.m., the

¹By letter dated March 15, 2016, Mungia notified the Court that this was his new address as he had been released from confinement. [17]

undersigned called Plaintiff's name three times in open court with no response, and Deputy Clerk Ryan went into the hallway outside the courtroom and called his name three times with no response.

RECOMMENDATION

The undersigned recommends that this case be dismissed due to Plaintiff's failure to comply with the Court's order to appear for the *Spears*/omnibus hearing on December 7, 2016.

NOTICE OF RIGHT TO APPEAL/OBJECT

After being served a copy of a Report and Recommendation, a party has 14 days to serve on the other parties, submit to the assigned District Judge, and file with the clerk of court his written objections to the Report and Recommendation. The objecting party must specifically identify the findings, conclusions, and recommendations to which he objects. The District Court need not consider frivolous, conclusive, or general objections. An opposing party has seven days after being served with objections, to serve and file a response or to notify the District Judge he does not intend to respond to the objections. Except on grounds of plain error, a party cannot attack on appeal any proposed factual finding or legal conclusion accepted by the District Court to which he did not timely file objections. *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

Signed, this the 8th day of December, 2016.

/s/ Robert H. Walker

ROBERT H. WALKER
UNITED STATES MAGISTRATE JUDGE